

No. 05-733 DEC - 5 2005

OFFICE OF THE CLERK

IN THE

United States Supreme Court



NORWEGIAN CRUISE LINE, INC.,

Petitioner,

v.

MARK CASAVANT & TARA CASAVANT,

Respondents.

*On Petition for a Writ of Certiorari to the
Supreme Judicial Court of Massachusetts*

PETITION FOR A WRIT OF CERTIORARI

Peter A. Junge
JUNGE & MELE, LLP
Attorneys for Petitioner
29 Broadway
New York, New York 10006
212-269-0061

QUESTIONS PRESENTED FOR REVIEW

1) Whether state courts may refuse to enforce forum selection clauses in maritime contracts based upon the application of *state contract law* which directly conflicts with the general maritime law of the United States and its principle of uniformity as established by this Court?

2) Whether state courts may enlarge the existing liabilities of cruise ship operators under the general maritime law of the United States by holding that passengers may unilaterally cancel ticket contracts at will for *any reason* prior to sailing?

**PARTIES TO THE PROCEEDINGS
AND RULE 29.6 STATEMENT**

Petitioner, Norwegian Cruise Line Ltd., currently NCL Bahamas Ltd., is a corporation organized and existing under the laws of the Bahamas with its principal place of business and corporate headquarters located at Airport Corporate Center, 7665 Corporate Center Drive, Miami, Florida 33126. The parent company of NCL Bahamas Ltd. is Star Cruises PLC, a publicly held corporation, which through a holding company, owns all of its stock.

Respondents, Mark and Tara Casavant, are individuals who reside in the Commonwealth of Massachusetts.

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF CITED AUTHORITIES.....	v
TABLE OF APPENDICES.....	viii
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL PROVISION INVOLVED ...	2
STATEMENT OF THE CASE	2
A. Factual Background	2
B. The Appeals Court Decision.....	3
REASONS FOR GRANTING THE PETITION	4
ARGUMENT	
THE DECISIONS BELOW ARE IN DIRECT CONFLICT WITH FEDERAL MARITIME LAW AND MUST BE REVERSED.....	5

	<i>Page</i>
A. The courts below impermissibly enlarged a cruise operator's liability under the general maritime law by refusing to enforce a forum selection clause unless the operator produced evidence that a passenger affirmatively accepted the ticket contract.....	5
B. The courts below impermissibly enlarged a cruise operator's existing liability under maritime law by holding that passengers may unilaterally cancel a ticket contract at will	9
CONCLUSION.....	12

TABLE OF CITED AUTHORITIES

Cases:	Page
<i>American Dredging Co. v. Miller</i> , 510 U.S. 443 (1994).....	6
<i>Ames v. Celebrity Cruises Inc.</i> , 1998 WL 427694 at *5 n.11 (S.D.N.Y. 1998).....	10
<i>Carnival Cruise Lines Inc. v. Shute</i> , 499 U.S. 585 (1991)	3, 4, 5, 6, 7, 10, 11
<i>Cooper v. Carnival Cruise Lines</i> , 1992 WL 137012, 1992 A.M.C. 2852 (S.D.N.Y.)	8
<i>Cox Broadcasting Corp. v. Cohn</i> , 420 U.S. 469 (1975)	2
<i>Ferketich v. Carnival Cruise Lines</i> , 2002 WL 31371977 at *4-5 (E.D. Pa. 2002)	10
<i>Fisk v. Royal Caribbean Cruises, Ltd.</i> , 141 Idaho 290, 108 P.3d 990 (2005)	6
<i>In Re Garvey Marine Inc.</i> , 2004 WL 2005824 (N.D. Ill. 2004), citing <i>Kossick v. United Fruit Co.</i> , 365 U.S. 731 (1961)	9
<i>I & R Mechanical, Inc. v. Hazelton Mfg. Co.</i> , 62 Mass. App. Ct. 452, 817 N.E.2d 799 (2004), citing <i>Restatement (Second) of Contracts</i> § 50(1) (1981)	8
<i>Keikian v. Norwegian Cruise Line</i> , 2004 Mass. App. Div. 91 (2004)	7
<i>Lurie v. Norwegian Cruise Lines, Ltd.</i> , 305 F.Supp. 2d 352 (S.D.N.Y. 2004).....	10, 11

	<i>Page</i>
<i>Melnick v. Cunard Line Ltd.</i> , 875 F.Supp. 103 (N.D.N.Y. 1994)	7
<i>M/S Bremen v. Zapata Off-Shore Co.</i> , 407 U.S. 1 (1972)	5
<i>Murray v. Cunard Steamship Co.</i> , 235 N.Y. 162 (1923)	8
<i>Natale v. Regency Maritime Corp.</i> , 1995 WL 117611 at *3 (S.D.N.Y. 1995)	11
<i>Norfolk Southern Railway Company v. Kirby</i> , 125 S.Ct. 385, 160 L.Ed.2d 283 (2004)	2, 6
<i>Paredes v. Princess Cruises, Inc.</i> , 1 F.Supp. 2d 87 (D.Mass. 1998)	7, 8
<i>Rogers v. Furness, Withy & Co.</i> , 103 F. Supp. 314 (W.D.N.Y. 1951)	7
<i>Southern Pacific Co. v. Jensen</i> , 244 U.S. 205 (1917)	7
<i>Vimar Seguros Y Reaseguros, S.A. v.</i> <i>M/V Sky Reefer, et al.</i> , 515 U.S. 528 (1995) ...	5
<i>Wilburn Boat Co. v. Fireman's Fund Ins. Co.</i> , 348 U.S. 310 (1955)	5-6
 Statutes:	
28 U.S.C. § 1257	1
Article III, § 2, cl. 1 of the Constitution of the United States	2

Other Authorities:

AMERICAN LAW REPORTS, 6 A.L.R. 6th 659.....	4
---------------------------------------------	---

TABLE OF APPENDICES

	<i>Page</i>
Appendix A—	
Opinion and Order of the Appeals Court of Massachusetts, dated June 30, 2005	1a
Appendix B—	
Notice of Denial of Further Appellate Review of the Supreme Justice Court for the Common- wealth of Massachusetts, dated September 8, 2005.....	23a

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the decision of the Appeals Court of Massachusetts ("Appeals Court"), which is reported at 63 Mass. App. Ct. 785 (2005). Subsequently, the Supreme Judicial Court for the Commonwealth of Massachusetts issued an Order denying Petitioner's Application for Further Appellate Review which is reported at 445 Mass. 1101 (2005). The decision of the Appeals Court appears in Appendix A ("*App. A*"), and the Order of the Supreme Judicial Court in Appendix B ("*App. B*").

OPINIONS BELOW

The Appeals Court decision reversed the Worcester County Superior Court's dismissal of Respondents' complaint based upon a Florida forum selection clause in Petitioner's passenger ticket contract.

JURISDICTION

The decision of the Supreme Judicial Court for the Commonwealth of Massachusetts which denied Petitioner's Application for Further Appellate Review was entered on September 8, 2005. *App. B*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Although the Appeals Court remanded the case for trial of state contractual and statutory claims, the federal maritime rights decided therein are final and reviewable by this Court. The decisions below finally disposed of the federal maritime issues and reversal would terminate the state action. Moreover, the federal maritime issues requires a decision regardless of

the outcome of the state proceedings, and this Court's refusal to review the maritime issue might seriously erode federal policy. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479-486 (1975).

CONSTITUTIONAL PROVISION INVOLVED

The Supreme Court's authority to make decisional law for the interpretation of maritime contracts stems from the Constitution's grant of admiralty jurisdiction to federal courts. See Article III, § 2, cl. 1 of the Constitution of the United States which provides that the federal judicial power shall extend to "all Cases of admiralty and maritime Jurisdiction." *Norfolk Southern Railway Company v. Kirby*, 125 S.Ct. 385, 160 L.Ed.2d 283 (2004).

STATEMENT OF THE CASE

A. Factual Background

Respondents commenced this action to recover payment for a cruise from Boston on Petitioner's vessel, *NORWEGIAN MAJESTY*, on September 16, 2001. Petitioner cruise operator issued the Passenger Ticket Contract ("the contract") on August 27, 2001, and Respondents admit that they actually received it on or about September 3, 2001. Despite the fact that the contract contained a forum selection clause requiring that any claim "arising from or in connection with" the contract be commenced, filed and litigated before a court of proper jurisdiction located in Dade County, Florida, Respondents filed their lawsuit in Massachusetts.

It was and remains Petitioner's policy to refund, without penalty, the full fare paid if a passenger wished to cancel a cruise before sailing because of a specific objection to any

term or condition in the ticket contract. However, Respondents never raised any objection to any of the contract's terms and conditions, including the Dade County, Florida forum selection clause, even though the contract was in their possession for approximately two weeks before they were scheduled to sail. On the contrary, it is clear that Respondents did not object to the contract inasmuch as they only requested that their cruise be rescheduled.

In *Carnival Cruise Lines Inc. v. Shute*, 499 U.S. 585 (1991), this Court held that a forum selection clause in a passenger ticket contract was enforceable if "reasonably communicated" to the passenger. Here, Respondents never argued that the contract's terms, including the forum selection clause, were not reasonably communicated to them as required by *Shute*.

B. The Appeals Court Decision

The Appeals Court held that the forum selection clause was unenforceable because under Massachusetts *state contract law*, Respondents' were not deemed to have accepted the contract's terms and conditions by reason of their silence. Stated the court: "Acceptance by silence is exceptional (citations omitted)." "These claims of implied contract acceptance are to be reviewed under Massachusetts law, since Federal maritime law is silent and has not occupied the field." *App. A*. In addition, the Appeals Court held that Respondents' attempt to reschedule their cruise constituted sufficient objection to the contract's terms and conditions so as to permit them to circumvent the forum selection clause and the contract *as a whole*.